

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

**BRUCE KONYA, SIMON SHIFF,
STEPHEN SCHWARZ, AND DIANA
VASQUEZ, individually and as
representatives of a class
of participants and beneficiaries on behalf
of THE LOCKHEED MARTIN
CORPORATION SALARIED
EMPLOYEE RETIREMENT
PROGRAM AND THE LOCKHEED
MARTIN AEROSPACE HOURLY
PENSION PLAN,**

Plaintiff,

v.

LOCKHEED MARTIN CORPORATION,

Defendant.

No. 8:24-cv-00750-PJM

Hon. Peter J. Messitte

**DEFENDANT’S COURT-DIRECTED SUPPLEMENT IN SUPPORT OF DEFENDANT’S
MOTION TO DISMISS THE COMPLAINT**

During the October 10, 2024 hearing on Defendant Lockheed Martin Corporation’s Motion to Dismiss the Complaint (Doc. 26-1, 48), the Court directed Lockheed Martin file certain documents provided to Plaintiffs and other affected retirees in connection with the 2021 and 2022 pension-risk-transfer (“PRT”) transactions at issue in the Complaint (*e.g.*, Compl. ¶¶ 58-59). Accordingly, Lockheed Martin hereby submits the following materials:

1. **Exhibit A** is the August 3, 2021 letter Lockheed Martin sent to certain Plaintiffs and other affected retirees under the Lockheed Martin Corporate Salaried Employee Retirement Program (“LMRP”) and the Lockheed Martin Aerospace Hourly Pension Plan (“Aerospace Plan”) concerning the first PRT transaction referenced in the Complaint (¶ 58). The letter explained that

“Beginning Jan. 1, 2022, Athene Annuity and Life Company and Athene Annuity & Life Assurance Company of New York” (collectively, “Athene”) would “assume responsibility for your current monthly benefit” under the LMRP and/or Aerospace Plan. Ex. A at 1. The letter emphasized that there would be “**no changes** to the gross amount, timing or form of your monthly payment,” that affected retirees would “not incur any fees or transaction costs as a result of this change[,]” and that their “benefit will **continue to be protected**, as described” in the letter. *Id.* (emphases in original). The letter explained that the two Athene insurance companies referenced above were subsidiaries of Athene Holding, Ltd., and that “[a]s of Dec. 31, 2020, Athene Holding Ltd. had \$202 billion in total [GAAP] assets, \$182.6 billion in total GAAP liabilities, \$20.1 billion in total GAAP equity, and over 980,000 policyholders.” *Id.* at 2. The letter noted that Athene insurance was “well-capitalized” and “rated A+ from S&P and A from A.M. Best and Fitch” credit rating agencies. *Id.*¹ The letter further explained that Athene was selected by “Fiduciary Counselors, Inc., an independent fiduciary . . . engaged by the Lockheed Martin Pension Transaction Committee, a fiduciary of the plans, to act in the best interest of participants and beneficiaries in evaluating and selecting an insurer. The independent fiduciary conducted an objective, thorough and analytical due diligence of potential insurers. When making the selection, the independent fiduciary considered many factors, including the financial strength and rating of the insurance company, its ability to administer payments and its customer service capabilities.” *Id.* at 4. The letter also answered numerous other frequently asked questions, included a “Notice of State Guarantee Association Coverage of Annuities,” and otherwise directed participants to additional informational resources that were available or would soon be provided. *Id.* at 3-5.

¹ Recently, A.M. Best increased Athene’s credit rating to A+. *See* AM Best Upgrades Credit Ratings of Athene Holding Ltd. and Its Subsidiaries, available at <https://news.ambest.com/PR/PressContent.aspx?refnum=34845&altsrc=9>.

2. **Exhibit B** is the June 30, 2022 letter Lockheed Martin sent to certain Plaintiffs and affected retirees under the LMRP and Aerospace Plan regarding the second PRT transaction at issue in the Complaint (¶ 59). This letter conveyed materially similar information to that contained in the August 3, 2021 letter referenced above and attached as Exhibit A.

3. **Exhibit C** is the December 13, 2021 “Welcome Kit” Athene sent to Plaintiffs and other affected retirees regarding the first PRT transaction. Recipients were notified in advance by Lockheed Martin that they would receive this Welcome Kit. *See* Ex. A at 4 (“Athene will send you more information directly, including a full welcome kit in December 2021”). The Welcome Kit provided more information about Athene’s business and reiterated that Athene would begin paying the recipients’ monthly benefits on January 1, 2022. Ex. C at 1-2 & Frequently Asked Questions (“FAQs”). The Welcome Kit explained that benefit payments could be made by check or direct deposit, and that additional information could be obtained from Athene’s website or by calling Athene’s customer service center. *Id.* at 1-2. The Welcome kit also explained that the recipient would soon receive a formal annuity certificate from Athene, which would “clearly outline [Athene’s] irrevocable obligation to provide your retirement benefits,” and invited the recipient to review the enclosed FAQs and to contact Athene directly with any questions regarding Athene or their monthly benefits. *Id.* at 2. Among other things, the FAQs described Athene’s business and the benefit protections it provides, including, as one example, the following: “As an insurance company, we are required by law to maintain sufficient reserves to cover our obligations under group annuity contracts we issue. We must also have additional capital set aside to support our guarantees to you. Further the group annuity contract purchased by the Pension Plan provides additional protection by holding assets in a separate account dedicated exclusively to the payment of benefits to Pension Plan participants[.]” *Id.*, FAQs, at 2.

4. **Exhibit D** is the December 12, 2022 “Welcome Kit” Athene sent regarding the second PRT. This Welcome Kit contained information that was materially similar to that contained in the December 13, 2021 Welcome Kit referenced above and attached as Exhibit C.

5. **Exhibits E and F** are copies of Annuity Certificates that were personalized and sent to Plaintiffs following the first and second PRT transactions, respectively. Substantially similar versions were sent to other Plaintiffs and other retirees affected by the PRT transactions. The Annuity Certificates “describe[d] the monthly payments irrevocably guaranteed to [the recipient] by Athene . . . under the Group Annuity Contract referred to on the first page of [the] Certificate[.]” Ex. E at 3; Ex. F at 3. The Annuity Certificates also explained that they “contain[ed] a summary of certain important terms of the [Group Annuity] Contract,” which “contain[ed] a more complete description of [the recipient’s] rights and Athene’s obligations” and could be obtained “by submitting a request to the address” provided in the Annuity Certificates. Ex. E at 7; Ex. F at 7. Finally, the Annuity Certificates confirmed that the recipient “shall have the right to enforce all of the provisions of the [Group Annuity] Contract, including . . . [the] right to receive Annuity Payments under the Contract, and such right is enforceable solely against Athene[.]” *Id.*

6. **Exhibits G and H** are copies of the two Group Annuity Contracts Lockheed Martin entered into with Athene in connection with the first PRT transaction (Compl. ¶ 58). Together, they show, among other things, that over \$4.83 billion was transferred to Athene to be deposited in a Separate Account for purposes of paying monthly benefits to Plaintiffs and other affected retirees and beneficiaries. *See* Ex. G at 1 (“Total Contribution Amount”); Ex. H at 1; Ex. G § 1.2 (“On the date the Contribution Amount is received, Athene will allocate one hundred percent (100%) of the Contribution Amount received on such date to the Separate Account.”); Ex. G. § 1.3 (“In connection with Annuity Payments owed in each month, Athene will withdraw from the

Separate Account assets with a Market Value equal to the Aggregate Monthly Payment In the event that the assets in the Separate Account are not sufficient to make such payments . . . , Athene shall use the assets in its General Account to make such payments.”); Ex. H §§ 1.2-1.3.

7. **Exhibits I and J** are a copies of the two Group Annuity Contracts Lockheed Martin entered into with Athene in connection with the second PRT transaction (Compl. ¶ 59). Together, they show that over \$4.28 billion was transferred to Athene to be deposited in a Separate Account for purposes of paying monthly benefits to affected retirees and beneficiaries (in the same manner provided under the Group Annuity Contracts referenced in Paragraph 6 above). *See* Ex. I at 1; Ex. J at 1; Ex. I §§ 1.2-1.3; Ex. J §§ 1.2-1.3.

Respectfully submitted,

/s/ Christopher J. Boran

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